



This is a repository copy of *John Hadley: Animal property rights: A theory of habitat rights for wild animals*.

White Rose Research Online URL for this paper:

<https://eprints.whiterose.ac.uk/157944/>

Version: Accepted Version

Article:

Milburn, J. orcid.org/0000-0003-0638-8555 (2017) John Hadley: Animal property rights: A theory of habitat rights for wild animals. *Res Publica*, 23 (1). pp. 147-151. ISSN 1356-4765

<https://doi.org/10.1007/s11158-016-9345-y>

This is a post-peer-review, pre-copyedit version of an article published in *Res Publica*. The final authenticated version is available online at: <http://dx.doi.org/10.1007/s11158-016-9345-y>.

Reuse

Items deposited in White Rose Research Online are protected by copyright, with all rights reserved unless indicated otherwise. They may be downloaded and/or printed for private study, or other acts as permitted by national copyright laws. The publisher or other rights holders may allow further reproduction and re-use of the full text version. This is indicated by the licence information on the White Rose Research Online record for the item.

Takedown

If you consider content in White Rose Research Online to be in breach of UK law, please notify us by emailing eprints@whiterose.ac.uk including the URL of the record and the reason for the withdrawal request.



eprints@whiterose.ac.uk
<https://eprints.whiterose.ac.uk/>

John Hadley: *Animal Property Rights: A Theory of Habitat Rights for Wild Animals*

Lexington Books, Lanham, MA, 2015, x + 142 pp.

Upon seeing “animal” and “property” in a work’s title, one’s mind may be drawn to the entrenched debates about nonhuman animals (hereafter, “animals”) *as* property. This is not the focus of John Hadley’s *Animal Property Rights*. Instead, Hadley argues that free-living (“wild”) animals have a particular kind of property right in their territory, meaning that their access to and free use of the natural goods in their territory should not be unduly limited by humans. This theory of animal property rights has two central conceptual elements: a system of guardianship and the use of territory to demarcate animal property. The guardianship system requires the appointment of a human who can act on the animals’ behalf, most clearly coming to the fore when animals’ property rights clash with humans’ property rights. For example, if I seek to develop my land, but it is land used by an assortment of animals, I should, Hadley says, be legally obliged to engage in mediation with the animals (represented by their guardian) in order to work out an amicable way forward, respectful of their right to access and make use of the “natural resources” on the land. This does not mean that I would be unable to develop my land in all circumstances, but I may be obliged to make provisions for the animals. Hadley recognizes that the second key concept, “territory”, is contentious. It can be difficult to judge what behaviours make a parcel of land into the “territory” of a particular (group of) animal(s), and estimations of the size of territories among experts can vary quite considerably. Nonetheless, it is a concept already used in real-world property discussions. As such, “the detail from which to shape the content of animal property rights does not come from philosophical fantasy, but the same scientific sources deemed credible enough to shape human property rights incidents” – think of protection zones for vulnerable species – so “it’s clear that the property rights of animals can be packaged in such a way as to mesh with existing economic, political, and legal institutions which have a bearing on the practical dimensions of ownership” (28).

Hadley’s argument is presented against the background of the contemporary institution of property (1-6). The book ultimately has a highly pragmatic focus – the author is concerned with presenting a particular policy proposal in as positive a light (and to as broad an audience) as possible. To that end, we find not merely arguments for the conclusion that animals can and should be considered property owners, but explanations of where animals’ property rights would fit in to, and how they compare to, existing property arrangements. These are just examples; Hadley, a philosopher, seems happy to leave fuller development of the areas of his theory requiring specific legal/ecological expertise to others (123). He is also concerned with reconciling animal ethicists and environmental ethicists, at least insofar as both could see merit in animal property rights. This is raised repeatedly, and Chapter 5 is devoted to the issue. As Hadley seems to admit (93), this sometimes takes the book off-topic; for example, a discussion (78-80) of therapeutic killing (that is, the killing of animals of overabundant or introduced species for environmental purposes) seems to be unrelated to the

book's main argument. Nonetheless, Hadley's proposal does have genuine potential for reconciliation of animal and environmental ethicists/activists, at least on this one issue. It is not the "golden bullet" that will finally and forever ally the "tree-huggers and the Bambi-lovers", but maybe policy convergence is the best we can hope for – both groups, though for different reasons, should agree about (for example) veganism, clean energy, and now, we might add, animal property rights.

Overall, Hadley's pragmatic focus is quite refreshing. Philosophical minutiae are avoided and the position is presented in a positive light from a variety of perspectives. Hadley is sometimes a little *too* dismissive of theoretical differences. For example, he refuses to take a side on the "location question" – whether the source of value is individual sentient animals or relationships between natural entities – and goes so far as to claim that "nothing about protecting animals or ecosystems in the real world turns on its outcome" (111). This is surely incorrect; for example, disagreements about therapeutic killing seem to rest, at least in part, on a disagreement concerning the location question. Despite possible metaphysical/metaethical disagreements with more orthodox animal ethicists, I suspect that Hadley is more animal than environmental ethicist when it comes to the location question. Another relevant disciplinary split is that between the "old" and "new" animal ethicists; Peter Singer (1975) and Tom Regan (1984) are paradigmatic of the old "moral" approach, while Sue Donaldson and Will Kymlicka (2011) are paradigmatic of the new "political" approach. Hadley *seems* to align himself with the old approach (8, 76, 87, 91, 117), even while criticising the new approach – namely, Donaldson and Kymlicka's sovereignty proposal (85-94) – for exaggerating differences between the two. I found this particularly interesting for two reasons. First, Hadley's project is in many ways typical of the new approaches. It appeals to liberal values, focuses on interests while retaining rights-talk, stresses deliberation with animals, offers the argument from species overlap¹ little space and is highly pragmatic (cf. Milligan 2015). Second, I do not think (despite both sides' desire to distance themselves from the other) that animal property rights and animal sovereignty theory are as far apart as they may seem – indeed, they may actually be compatible (cf. Cooke, forthcoming).

Other than the importance of the central proposal, I think the book is at its best – and likely of most interest to readers of this journal – when it is exploring justifications for the institution of animal property rights. The work is not a simple premises-argument-conclusion philosophical treatise. Instead, after outlining the proposal, Hadley explores several separate arguments for it. Chapter 3 sees development of classic labour and first occupancy theories of ownership, while Chapter 4 looks to the basic needs of animals. Though this is not made explicit, perhaps Chapter 3 is directed at property theorists and Chapter 4 is directed at animal ethicists. Another – this time indirect – approach is offered in Chapter 6 ("Practice and Pragmatism") which is likely aimed at environmentalists. Hadley's consideration of extending the Lockean labour criterion of acquisition (as well as the Lockean proviso) to animals is thoughtful and clear. There is likely more to be said for (or at least *about*) it (cf. Milburn 2014), but, admittedly, an account of animal property rights based wholly on this basis would look very different from Hadley's. For example – putting to one side important

¹ Also called the argument from marginal cases; see Horta 2014.

questions concerning intentionality (42-44) – a labour-based account of animal property rights might be very good at protecting certain interests possessed by industrious animals like nest-building birds, but much worse at protecting the interests of animals who do not “labour” in the same way, such as those belonging to certain sea-faring or coastal species. Of course, these animals could have at least as much interest in their habitats being protected from human development as do nesting birds. It’s also unclear how well a labour theory could be used as the basis of habitat rights in general, given that many animals, unlike humans, do not work the land.

Hadley ultimately rejects labour accounts, along with first occupancy accounts, as being too tied up with personhood to suitably ground animal property rights. Instead, he favours an interest-based account. Given that animals have a strong “interest in using natural goods ... to meet their basic needs and those of their offspring” (54), they have a right to do so, which gives rise to a property right. Hadley does not explicitly tie this into an interest rights approach to animal ethics (eg, Cochrane 2012), but simply compares the significance of animals’ fundamental interests in satisfying their basic needs to the trivial interests of humans generally accepted as sufficient for property. The final possible justification Hadley proposes comes from a human interest in seeing certain habitats or species protected. In these indirect terms, animal property rights become a tool to be applied, be it selectively or broadly, be it in the spirit of cooperation or to respond to disaster (106). This comes across as a “second best” argument; if the interest argument fails, Hadley will fall back onto the indirect justification. I was pleasantly surprised to see a brief defence (107-8) of much-maligned indirect duties to animals. It doesn’t matter to the animals themselves, says Hadley, *why* they’re protected.

Hadley’s book is short,² and so does not address everything that might be said. I would like to close this review by raising three questions that might serve as starting points for further debate.

First, I am left questioning the relationship of animal property rights to animal ethics more broadly. Hadley – quite deliberately – does not present a full account of animal rights. It might be easy to imagine an animal ethicist, and especially an interest rights theorist, simply adding animal property rights into an existing normative framework. Hadley even thinks that there has *always* been an idea of animal property rights implicit in traditional approaches to animal rights (76). But I wonder how central an account of animal property *should* be to animal rights frameworks. And while it makes *conceptual* sense to separate animal property rights from animal rights more broadly, it could potentially lead to some odd situations. The animals’ advocate might be tasked with arguing against the development of animals’ territory, while nonetheless lacking power and authority to challenge senseless slaughter. This could even lead to a particular kind of “repugnant conclusion”; all developers would have to do to ensure that they do not tread over the animals’ interest in access to/use of the land would be to kill said animals. Rabbits possess no interest in using their land if they have all been shot, no matter how articulate and knowledgeable their advocate.

² After the exclusion of blank pages, the glossary and such, it is little over 100 pages.

Second, it is unclear where “liminal” animals, those neither fully wild nor fully domesticated, fit into Hadley’s picture. Granted, animal property rights exist for wild rather than domesticated animals. But liminal animals are imperfectly captured by Hadley’s account of some animals’ “double-character” – alternating between wild and domesticated (67-8). Does Hadley want to give urban gulls property rights over the buildings upon which they live? How about the bins from which they feed? Perhaps, in a reversal of the norm, these animals’ advocates would demand that humans *continue* to habituate and develop the territory, casting aside unwanted food and leaving litter exposed. (And this kind of reversal is not a uniquely urban possibility – farmland, for example, is an important habitat for many animals.) One might claim that I am here stretching “natural goods” too far, or that the advocate would be overstepping her jurisdiction, but perhaps others would accept this conclusion. My point is that there is likely room for careful thought about if/how liminal animals fit into the theory of animal property rights.

Third, and this is perhaps the biggest question of all, we have to ask to what extent Hadley is actually talking about *property* rights. Even in the subtitle of the book, we find that property rights have become *habitat* rights. Hadley has a particular conception of what a property right consists in: he begins with animals’ interest in using territory, translates this in a *right* to use territory, and then claims that “if animals have a *right to use* natural goods this means that, logically, they have a *property* right in the good concerned” (54, emphasis Hadley’s). This is a logical jump that many readers will be unwilling to take. There are many natural goods that we are free to use which are not our property. Air and sunlight are obvious examples. Furthermore, it’s unclear if the animals’ putative “property” rights extend beyond a right to use, and possibly the right to exclude – specifically, exclude certain human activities (9-10) – which may amount to the same thing. Even despite this, we find that “animal property rights” and “property rights” are distinct. Interests, Hadley claims, can “give rise to a *property* right. In so far as the individual with the interest is an animal, the property right in question is an *animal* property right” (118, emphasis Hadley’s). But “animal property rights are conceptually distinctive because they coexist with the property rights of human beings” (15). This distinction seems to be taken as a starting assumption of the theory, and is likely a consequence of Hadley’s pragmatism; animal property rights are a tool with a particular purpose. They are not, for example, for pushing humans off property, or for protecting animals from each other. They’re just a way to have humans pay attention to certain kinds of animal interests – their interest in the natural goods within their territory. But then perhaps Hadley isn’t *really* proposing property rights at all; perhaps he is proposing a system for recognising and protecting animals’ legitimate interest in access to their habitat/territory and the free use of the natural goods contained therein. Perhaps “property” is shorthand.

As an idea, animal property rights are new, important and exciting; the theory warrants attention. As a book, *Animal Property Rights* is engaging and readable. Hadley’s prose is clear and concise, his ideas comprehensible and realistic. I think some philosophers may find the pragmatic focus frustrating; precisely the issues Hadley brushes over are the ones in which some are most interested. This, combined with the book’s short length, leaves much room for further work on the question, and I hope this will be forthcoming.

Acknowledgements

With thanks to Kyle Shuttleworth and an anonymous reviewer for comments and to David Archard and Jeremy Watkins for their continued support. This piece was written while I was undertaking research financially supported by the Department for Employment and Learning, Northern Ireland.

References

- Cochrane, Alasdair. 2012. *Animal Rights Without Liberation*. New York, NY: Columbia University Press.
- Cooke, Steve. Forthcoming. Animal kingdoms: On habitat rights for wild animals. *Environmental Values*.
- Donaldson, Sue and Will Kymlicka. 2011. *Zoopolis*. Oxford: Oxford University Press.
- Horta, Oscar. 2014. The scope of the argument from species overlap. *Journal of Applied Philosophy* 31(2): 142-54. DOI: 10.1111/japp.12051
- Milburn, Josh. 2014. The demandingness of Nozick's 'Lockean' proviso. *European Journal of Political Theory*. DOI: 10.1177/1474885114562978
- Milligan, Tony. 2015. The political turn in animal rights. *Politics and Animals* 1(1): 6-15.
- Regan, Tom. 1984. *The Case for Animal Rights*. Oakland, CA: University of California Press.
- Singer, Peter. 1975. *Animal Liberation*. New York, NY: HarperCollins.